IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition Nos.324, 327 and 1291 of 2006

E.Kathirvelu .. Petitioner in HCP.324/06

A.Salya .. Petitioner in HCP.327/06

K.Nageswara Rao .. Petitioner in HCP.1291/06

Vs.

1. State, Rep. by
   Director, Department of
   Social Welfare, Chepauk, Chennai. ..1st Respondent in HCP 324 & 327/06

2. Inspector of Police,
   P1, Pulianthope Police Station,
   Pulianthope, Chennai. .. 2nd respondent in HCP.324/06

2. Inspector of Police,
   H1, Washermanpet Police Station,
   Washermanpet, Chennai. .. 2nd respondent in HCP.327/06

3. Chairperson,
   Central Adoption and Resource
   Agency (CARA), West Block 8,
   Wing-2, II Floor, R.K.Puram,
   New Delhi-66.

4. Chairperson,
   Voluntary Co-ordinating Agency
   (VCA), No.5, III Main Road,
   West Shenoy Nagar, Chennai-600 030.

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5. General Secretary,
   Indian Council for Child Welfare
    (ICCW), No.5, III Main Road,
   West Shenoy Nagar, Chennai-600 030.

6. Chairperson,
   Malaysian Social Services,
   Nergundram, Chennai.

7. Foreign Secretary, Govt. of
    India, Ministry of External
   Affairs, South Block, New Delhi-110 011 .. Respondents 3 to 7 in HCPs. 324 & 327/06

8. Meiling Foundation Stiching Voor
    Adoptie, En Projekthulp Koningin
   Emmalaan 2, 2264 SK Leidshendam,
   The Netherlands. .. 8th respondent in HCP.324/06

8. Department of Families Youth
    and Community Care, Adoption
   Section, 46, Charlotte Street,
   Brisbane, Queens Land, 4001.
   Australia. .. 8th respondent in HCP.327/06

9. Central Bureau of Investigation,
   Rep. by its Director, Shastri
   Bhavan, Chennai.

10. Union of India,
   Rep. by the Secretary,
   Department of Women and Children,
   Ministry of Human Resource
   Development, New Delhi. .. Respondents 9 & 10 in HCPs. 324 & 327/06

1. The State, rep. by Inspector
    of Police, P1, Pulianthope
   Police Station, Chennai.

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2. Assistant Commissioner of Police,
   City Crime Branch, Egmore,
   Chennai.

3. The Commissioner of Police,
   Chennai City Police,
   Egmore, Chennai-600 008.

4. Chairperson,
   Malaysian Social Service
   Mandarvede, Chennai-117. .. Respondents 1-4
   in HCP.1291/06

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus to as stated therein.

For Petitioner

in HCP.324 & 327/06 : Ms.D.Geetha
in HCP.1291/06 : Mr.S.Mohana Vadivelan

For Respondents : Mr.N.R.Elango
APP. For State
: Mr.P.Wilson
Asst. Solicitor General
for Central Govt.
: Mr.P.Subba Reddy
for R-4 in HCPs 324 & 327/06
: Mrs.Geetha Ramaseshan
for R-5 in HCPs.324 & 327/06
: Mr.A.Thiagarajan
for Mr.G.Mohanakrishnan
for R-6 in HCPs.324 & 327/06

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COMMON ORDER

(Order of the Court was made by P.D.DINAKARAN, J.)

Human Trafficking is the modern-day slave trade, which poses a global threat. The Trafficking is increasingly becoming an organized crime and the same raises serious public health concerns. It spreads across the continents, which is a matter of serious concern. The threat of human trafficking was discussed in threadbare by the Apex Court in various decisions, viz., in Laxmi Kant Pande vs. Union of India, [AIR 1984 SC 469, AIR 1986 SC 272, AIR 1987 SC 232, 2001 (9) SCC 379], in Karnataka State Council for

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Child Welfare vs. Society of Sisters of Charity ST. Gerosa Convent (AIR 1984 SC 658), in Sumanlak Chhotelall Kamdar vs. Miss Asha Trilokbhai Saha (AIR 1995 SC 1892), in Indian Council Social Welfare vs. State of A.P. (1999 (6) SCC 365), in Anoksha vs. State of Rajasthan (2004 (1) SCC 382) and in St.Therasas Tender Loving Care Home and Ors. vs. State of Andhra Pradesh (AIR 2005 SC 4375) as well as by a Division Bench judgment of the Andhra Pradesh High Court dated 2.5.2003 in the case of A.P.John Clemants & another (C.M.A.Nos.2009 & 2076 of 2002) and by a Division Bench of this Court in S.Banu vs. Raghupathy, Principal Thiruvalluvar Gurukulam School and Ors. in the recent decision dated 19.6.2007 in H.C.P.No.1139 of 2006).

2. That apart, pursuant to the directions given by the Apex Court in the Laxmi Kant Pande's case, referred supra, the Ministry of Social Welare Department, Government of India, also constituted an agency called Central Adoption Resource Agency (CARA), the third respondent herein, on 28th June, 1990, to oversee the domestic and inter-country adoptions. The said agency, CARA also framed certain guidelines for inter-country adoptions. Repeated guidelines are being issued from time to time by the Apex Court as well as by various other High Courts to the Department of Social Welfare as also to the Legal Services Authority, CARA and other special groups, both at Central and State, requiring them to ensure the guidelines presecribed scrupulously. But, still the grievance of human trafficking continues.

3. The above are the three cases that are only illustrative. H.C.P.No.324 of 2006 is by the father of the detenu by name Satish Kumar. According to him, on the night of 9.3.99, he along with his wife and the detenu child, aged 1 ½ years old, were sleeping outside the house and when his wife woke up at about 3.00 a.m. on 9/10.3.99, she found her son Satish Kumar, who was sleeping beside her, was missing. According to the petitioner, even though on the very next day, a complaint was lodged at the second respondent police station and a case was registered in Crime No.391 of 1999 and investigation was taken up and subsequently, the case was transferred to the file of CBCID, by an order of the Director General of Police on 20.9.2006, till date the respondents could not make any improvement in the investigation, obviously for the reason that the child had already been given in adoption to the parents at Netherlands.

4. H.C.P.No.327 of 2006 is also by the father of the detenue, by name, Jabeen, aged four years, alleging that his daughter was missing from 26.11.1998. The petitioner complains that on 26.11.1998, the detenue Jabeen and the petitioner's son by name Sadam Hussain, were playing near the door steps of the house and at that time, two ladies came in an auto and took the girl child and when the same was objected by the minor son Sadam Hussain, they carried him also in the auto, but somehow Sadam Hussain was able to jump out of the auto and escaped. Even though the petitioner

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reported the same to the police on the same day, on the basis of which, a case was registered in Crime No.1542 of 1998 and investigation was conducted and later on, the case was transferred to the file of CBCID by the order of Director General of Police on 20.9.2006, still the girl baby could not be brought before this Court by the respondents, for the reason that she was given in adoption to an Australian family.

5. Again in H.C.P.No.1291 of 2006, a boy aged 1 ½ years old, by name Subash, was missing from 19.2.99 and his father, the petitioner in this H.C.P., lodged a complaint before the first respondent police, who registered the same in Crime No.285 of 1999, which was subsequently transferred by the order of Commissioner of Police to the Central Crime Branch. But, till date the said detenu Subash could not be traced and it is reported that the investigation in the case revealed that the boy was also given in adoption to the parents in U.S.A.

6. The common grievance of the petitioners in these Habeas Corpus Petitions is that the agencies, who have been engaged to complete the adoption process, have not followed the guidelines prescribed by the CARA and in some cases, even though, the adoptions were made through the Court orders, they were based on impersonation and fraudulent documents. However, we do not want to express any opinion on this aspect at this stage as it would affect the investigation in the above crimes.

7. Mr.N.R.Elango, learned Additional Public Prosecutor, very fairly submits that even though the officials of CBCID and the Central Crime Branch are capable of proceeding with the investigation further, for better and expeditious investigation, these matters may be transferred to the file of Central Bureau of Investigation (CBI), as the investigation has to be conducted outside the India also, after getting due permission from the Ministry of External Affairs and after following the necessary procedures, viz., letter of request, etc., as contemplated under the Code of Criminal Procedure.

8. Mr.P.Wilson, learned Assistant Solicitor General, appearing for the CARA as well as for the C.B.I. and Ministry of External Affairs, also fairly comes forward that the C.B.I. is prepared to undertake the investigation in view of the serious nature of the crimes in question. The learned Assistant Solicitor General also guarantees this Court that both the Ministry of External Affairs and the CARA will extend their full support to the C.B.I. in the matter.

9. Under such circumstances, without expressing any opinion on the merits of the cases, we direct the transfer of investigation of all these cases to the C.B.I., Southern Zone, with a further direction to the Director of C.B.I., Southern Zone, to depute Mr.Ashok Kumar, I.P.S., a senior officer in the Southern Zone of

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C.B.I., to undertake the investigation of the cases pending in Crime No.391 of 1999 on the file of P1 Pulianthope police station, the second respondent in H.C.P.No.324 of 2006, Crime No.1542 of 1998 on the file of H1, Washermanpet Police Station, second respondent in H.C.P.No.327 of 2006 and in Crime No.285 of 1999 on the file P1 Pulianthope Police Station, first respondent in H.C.P.No.1291 of 2006, as well as other similar nature of cases, which shall be transferred by the State Government through appropriate orders by the Director General of Police/Commissioner of Police, to transfer the same to the file of C.B.I., which shall be entrusted to Mr.Ashok Kumar, I.P.S., to enable him to proceed with the investigation in the case of alike nature.

10. The above Habeas Corpus Petitions are disposed of accordingly with the following directions and observations:-

(i) The investigation shall also include as to whether there was any fraud committed on the Court concerned by way of impersonation or by creating false and fabricated documents and if so, to take action in accordance with law against all those persons involved;

(ii) The C.B.I., Southern Zone, is at liberty to constitute a Special Cell under the supervision of Mr.Ashok Kumar, I.P.S., to expedite the investigation directed as above;

(iii) The Union of India, the Ministry of External Affairs as well as the Home Ministry of the State and the State Police, including C.B.C.I.D., shall extend their full co-operation to the investigation by the C.B.I.;

(iv) Based on the final report of the investigation, the C.B.I. shall proceed with the matter in accordance with law;

(v) A copy of the said final report of the C.B.I. officer after the completion of investigation shall be placed before this Court for reporting compliance, after serving a copy in advance to the Ministry of External Affairs, Home Ministry of State, Department of Social Welfare as well as the CARA for their further guidance in the matter, who shall take appropriate decision for preventive, remedial and compensatory reliefs in the matter;

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Registry is directed to place the same before the Board concerned for reporting compliance of the above directions and for further orders, if any required, after three (3) months.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Director, Department of
   Social Welfare, Chepauk, Chennai.

2. Inspector of Police,
   P1, Pulianthope Police Station,
   Pulianthope, Chennai.

3. Inspector of Police,
   H1, Washermanpet Police Station,
   Washermanpet, Chennai.

4. Chairperson,
   Central Adoption and Resource
   Agency (CARA), West Block 8,
   Wing-2, II Floor, R.K.Puram,
   New Delhi-66.

5. Chairperson,
   Voluntary Co-ordinating Agency
   (VCA), No.5, III Main Road,
   West Shenoy Nagar, Chennai-600 030.

6. General Secretary,
   Indian Council for Child Welfare
   (ICCW), No.5, III Main Road,
   West Shenoy Nagar, Chennai-600 030.

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7. Chairperson,
   Malaysian Social Services,
   Nergundram, Chennai.

8. Foreign Secretary, Govt. of
   India, Ministry of External
   Affairs, South Block, New Delhi-110 011

9. Meiling Foundation Stiching Voor
   Adoptie, En Projekthulp Koningin
   Emmalaan 2, 2264 SK Leidshendam,
   The Netherlands.

10. Department of Families Youth
   and Community Care, Adoption
   Section, 46, Charlotte Street,
   Brisbane, Queens Land, 4001.
   Australia.

11. Director,
Central Bureau of Investigation,
   Shastri
   Bhavan, Chennai.

12.The Secretary,
Union of India,
   Department of Women and Children,
   Ministry of Human Resource
   Development, New Delhi.

13. Assistant Commissioner of Police,
   City Crime Branch, Egmore,
   Chennai.

14. The Commissioner of Police,
   Chennai City Police,
   Egmore, Chennai-600 008.

15. Chairperson,
   Malaysian Social Service
   Mandarvede, Chennai-117.

16.The Secretary to Government
Home Department,Fort. St. Geroge, Chennai-9.

17.The Director General of Police,
Chennai-4.

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18. The Director,
CBI (South Zone)
Sarthri Bhavan,
Chennai.

19.The Dy.Superintendent of Police,
CBCID, Headquaters, Government Estate,Madras -2.

20.The Section Officer,
Crl.Section, High Court, Madras (For Posting of HCP for reporting Compliance after 3 months).

+2ccs to Mr.D.Geetha, Advocate Sr 55183, 55182
+1cc to Mr.G.Mohanakrishnan, Advocate Sr 55066
+1cc to Mr.P.Wilson, Advocate Sr 55127
+1cc to M/s.. S.Mohanavadivelan,Advocate Sr 55238

AD (CO)
km/12.9.

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1291 of 2006

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